

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Engineering Division

July 25, 2008

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

**Authorization to Enter Into a Cooperative Agreement-Locally Led Contracting  
Between the State of Hawaii, Department of Land and Natural Resources  
and the United States Department of Agriculture, Natural Resources  
Conservation Service, Regarding the  
Kilauea River/Wailapa Stream Debris And Sediment Removal Project**

The Engineering Division, on behalf of the Department of Land and Natural Resources (DLNR), desires to enter into a *Cooperative Agreement-Locally Led Contracting* (Agreement) with the United States Department of Agriculture, Natural Resources Conservation Service (NRCS) to participate in the Kilauea River/Wailapa Stream Debris and Sediment Removal Project.

**BACKGROUND:**

Under the provisions of Section 216 of Public Law 81-516, Emergency Watershed Protection Program and Title IV of the Agricultural Credit Act of 1978, Public Law 95-334, NRCS is authorized to assist the State of Hawaii, Department of Land and Natural Resources, in relieving hazards created by natural disasters that cause a sudden impairment of a watershed and to install emergency watershed protection measures to relieve hazards and damages created by the flood of March 2006.

NRCS will provide a maximum of \$4,000,000 for the Kilauea River/Wailapa Stream Debris and Sediment Removal Project. DLNR will provide in-kind contribution (i.e., consultant services, in-house labor to administer contracts and inspect construction work.) The ratio of NRCS contribution to DLNR in-kind contribution will be 3 to 1. The maximum value of the in-kind contribution will not exceed \$1,334,000.

The objective of the Agreement is to establish a partnership framework that fosters cooperation and collaboration between NRCS and DLNR and defines the roles and responsibilities of both agencies.

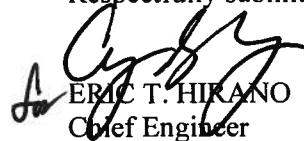
A copy of the draft Agreement is attached.

**RECOMMENDATION:**

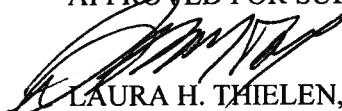
That the Board of Land and Natural Resources authorize the Chairperson to sign the Agreement and other necessary documents pertaining to the project, subject to review and approval as to form by the Attorney General's office.

Attachments

Respectfully submitted,

  
ERIC T. HIRANO  
Chief Engineer

APPROVED FOR SUBMITTAL:

  
LAURA H. THIELEN, Chairperson

**ITEM L-4**

STATE Hawaii

PROJECT Kilauea River/Wailapa  
Stream Debris and  
Sediment Removal,  
Kilauea, Kauai, Hawaii

AGREEMENT NO. \_\_\_\_\_

**UNITED STATES DEPARTMENT OF AGRICULTURE  
NATURAL RESOURCES CONSERVATION SERVICE**

**COOPERATIVE AGREEMENT  
LOCALLY LED CONTRACTING**

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 200\_, by and between the State of Hawaii, Department of Land and Natural Resources, hereinafter called the Sponsor; and the Natural Resources Conservation Service, United States Department of Agriculture, hereinafter called NRCS.

**WITNESSETH THAT:**

WHEREAS, under the provisions of Section 216 of Public Law 81-516, Emergency Watershed Protection Program, and Title IV of the Agricultural Credit Act of 1978, Public Law 95-334, NRCS is authorized to assist the Sponsor in relieving hazards created by natural disasters that cause a sudden impairment of a watershed, and

WHEREAS, NRCS and the Sponsor agree to install emergency watershed protection measures to relieve hazards and damages created by the flood of March 2006,

NOW, THEREFORE, in consideration of the premises and of the several promises to be faithfully performed by the parties hereto as set forth, the Sponsor and NRCS do hereby agree as follows:

- A. It is agreed that the following-described work is to be installed at an estimated cost of \$4,000,000.

<u>DSR No.</u>	<u>Description of Work</u>	<u>Estimated Cost</u>
LIHU-2006-01	Kilauea River/Wailapa Stream, Debris and Sediment Removal Kilauea, Island of Kauai, Hawaii	\$4,000,000

B. The Sponsor will:

1. Provide in-kind contribution (i.e., site investigation, topographic survey, let and administer contract(s), and inspect work performed). The maximum value of in-kind contribution will not exceed 25 percent of the actual cost of installing the emergency watershed protection measure described in Section A. The value of the in-kind contribution is estimated to be \$1,334,000. The Sponsor will retain records to support costs incurred by the Sponsor equal to the amount of the in-kind contribution.

2. The following individual is designated as the liaison between the Sponsor and NRCS.

Carty Chang, Planning Branch Chief  
Engineering Division  
Department of Land and Natural Resources  
State of Hawaii  
1151 Punchbowl Street, Room 221  
Honolulu, Hawaii 96813  
TEL: (808) 587-0227  
FAX: (808) 587-0283  
E-MAIL: [carty.s.chang@hawaii.gov](mailto:carty.s.chang@hawaii.gov)

3. Review and sign the construction plans for installing the emergency watershed protection measure described in Section A.
4. Provide certification that real property rights have been obtained for installation of the emergency watershed protection measure prior to advertising. Certification will be provided on Form NRCS-ADS-78, Assurances Relating to Real Property Acquisition, as amended.
5. Accept all financial and other responsibility for excess costs resulting from their failure to obtain, or their delay in obtaining, adequate land and water rights, permits, and licenses needed for the emergency watershed protection measure described in Section A.
6. Contract for installation of the emergency watershed protection measure described in Section A. in accordance with applicable County of Kauai and State of Hawaii requirements.
7. Comply with the applicable requirements in Attachments A and B to this agreement.
8. Ensure that all contracts for installation of the emergency watershed protection measure include the provisions contained in Attachment B to this agreement.

9. Provide copies of site maps to appropriate Federal and State agencies for environmental review. Sponsor will notify NRCS of environmental clearance, modification of construction plans, or any unresolved concerns prior to award of the contract(s) for installation of the emergency watershed protection measure.
10. Ensure that requirements for compliance with environmental and/or cultural resource laws are incorporated into the project.
11. Pay the contractor as provided in the contract(s). Submit billings for reimbursement to NRCS on Form SF-270, Request for Advance or Reimbursement.
12. Take reasonable and necessary actions to dispose of all contractual and administrative issues arising out of the contract(s) awarded under this agreement. This includes, but is not limited to, disputes, claims, protests of award, source evaluation, and litigation that may result from the construction contract. Such actions will be at the expense of the Sponsor including legal expenses.
13. Arrange for and conduct final inspection of completed emergency watershed protection measure. Certify that the project was installed in accordance with contractual requirements.
14. Upon acceptance of the work from the contractor(s), assume responsibility for operation and maintenance.
15. Hold and save NRCS free from any and all claims or causes of action whatsoever resulting from the obligations undertaken by the Sponsor under this agreement or resulting from the work provided for in this agreement.
6. Retain all records dealing with the award and administration of contract(s) for 3 years from the date of the Sponsor's submission of the FINAL Request for Reimbursement or until final audit findings have been resolved, whichever is longer. If any litigation is started before the expiration of the 3-year period, the records are to be retained until the litigation is resolved or the end of the 3-year period, whichever is longer. Make such records available to the Comptroller General of the United States or his or her duly authorized representative and accredited representatives of the U.S. Department of Agriculture or cognizant audit agency for the purpose of making audit, examination, excerpts, and transcripts.

C. NRCS will:

1. Provide 100 percent of the cost for installing the emergency watershed protection measure described in Section A. This cost to NRCS is estimated to be \$4,000,000.

2. Credit the Sponsor for in-kind contributions, not to exceed 25 percent of the actual cost of installing the emergency watershed protection measure described in Section A.
3. Not be substantially involved with contractual administration of this agreement. However, NRCS will provide advice and counsel as needed.
4. Provide authorized technical services, including but not limited to obtaining basic information; and preparation of drawings, designs, and specifications.
5. Make payment to the Sponsor covering NRCS' share of the cost upon receipt and approval of Form SF-270, Request for Advance or Reimbursement.
6. Be available to conduct progress checks and participate in final inspections.
7. The following individual is designated as the liaison between the Sponsor and NRCS.

Michael Hayama, Civil Engineer  
USDA, Natural Resources Conservation Service  
300 Ala Moana Blvd., Room 4-118  
Honolulu, Hawaii 96850  
TEL: (808) 541-2600 ext. 123  
FAX: (808) 541-1335  
E-MAIL: [michael.hayama@hi.usda.gov](mailto:michael.hayama@hi.usda.gov)

D. It is mutually agreed that:

1. This agreement is effective the date it is fully executed by all parties to this agreement. It shall become null and void 90 calendar days after the date NRCS has executed this agreement if a construction contract has not been awarded.
2. The furnishing of financial and other assistance by NRCS is contingent upon the continuing availability of appropriations by Congress from which payment may be made and shall not obligate NRCS if Congress fails to so appropriate.
3. The contract for performing the work described in Section A will not be awarded to the Sponsor, or to any firm in which any Sponsor official or any member of such official's immediate family has direct or indirect interest in the pecuniary profits or contracts of such firms.
4. This agreement may be temporarily suspended by NRCS if NRCS determines that corrective action by the Sponsor is needed to meet the provisions of this agreement. Further, NRCS may suspend this agreement when it is evident that a termination is pending.

5. NRCS may terminate this agreement in whole or in part if it is determined by NRCS that the Sponsor has failed to comply with any of the conditions of this agreement. NRCS shall promptly notify the Sponsor in writing of the determination and reasons for the termination, together with the effective date. Payments made by or recoveries made by NRCS under this termination shall be in accord with the legal rights and liabilities of NRCS and the Sponsor.
6. This agreement may be renegotiated, amended, extended, or modified by written amendment as mutually agreed by both parties.
7. By signing this agreement, the Sponsor assures the U.S. Department of Agriculture that the program or activities provided for under this agreement will be conducted in compliance with all applicable Federal civil rights laws, rules, regulations, and policies.
8. The Sponsor may delegate certain responsibilities under this Agreement to the landowner of the real property in question (hereinafter called the Owner), consistent with the terms of any separate agreement that may be entered into between the Sponsor and the Owner.

**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**

By: \_\_\_\_\_ Approved as to Form  
LAURA H. THIELEN Signed: \_\_\_\_\_  
Title: Chairperson Deputy Attorney General  
Date: \_\_\_\_\_ Date: \_\_\_\_\_

**UNITED STATES DEPARTMENT OF AGRICULTURE**  
**NATURAL RESOURCES CONSERVATION SERVICE**

By: \_\_\_\_\_  
LAWRENCE T. YAMAMOTO  
Title: Director of Pacific Islands Area  
Date: \_\_\_\_\_